

**2013 DRAFTING REQUEST**

**Assembly Amendment (AA-AB40)**

Received: **6/5/2013** Received By: **mshovers**  
Wanted: **As time permits** Same as LRB:  
For: **Legislative Fiscal Bureau 7-7597** By/Representing: **Olin (RR)**  
May Contact: Drafter: **mshovers**  
Subject: **Tax, Individual - dedct/sbtrct** Addl. Drafters:  
Extra Copies:

Submit via email: **YES**  
Requester's email: **Legislative Fiscal Bureau**  
Carbon copy (CC) to:

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**Pre Topic:**

LFB:.....Olin (RR) -

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**Topic:**

Motion # 999: Create individual income tax deduction for private school tuition

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**Instructions:**

See attached. Subtract modification for private school tuition, from Motion #999

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mshovers 6/6/2013			_____			
/1	mshovers 6/7/2013	scalvin 6/6/2013	jmurphy 6/6/2013	_____	sbasford 6/6/2013		
/2		csicilia 6/10/2013	rschluet 6/10/2013	_____	sbasford 6/7/2013		
/3				_____	lparisi		

Vers. Drafted

Reviewed

Typed

Proofed

Submitted

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6/10/2013

FE Sent For:

<END>

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1/3 gjs 5/10  
13

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/?	mshovers 6/6/2013			_____			
/1		scalvin 6/6/2013	jmurphy 6/6/2013	_____	sbasford 6/6/2013		

FE Sent For:

12 MES 6/7/13  
/2 sac  
06/07/2013  
jm  
6/7  
<END>  
self

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**Pre Topic:**

LFB:.....Olin (RR) -

**Topic:**

Motion # 999: Create individual income tax deduction for private school tuition ✓

**Instructions:**

See attached. Subtract modification for private school tuition, from Motion #999

**Drafting History:**

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

/? mshovers 11 sad 06/06/2013  
 11 MES 6/6/13 Jm ulf

FE Sent For:

<END>

multichannel video providers from disconnecting a subscriber's video programming service, or a portion of that service, for failure to pay a bill until the unpaid bill is at least 45 days past due.

28. *Oil Pipeline Terminal Tax Distribution Hold Harmless.* Modify the oil pipeline terminal tax distribution to guarantee a minimum payment to municipalities where terminal property is located if the municipality received a payment in 2011. Set the minimum payment equal to the amount received by the municipality in 2011, except as follows. Set the minimum payment for an eligible municipality equal to 50% of the total ad valorem taxes paid to the state by the pipeline company with terminal property in the municipality if the total ad valorem tax paid to the state by that pipeline company is less than 200% of the 2011 state payment to the municipality attributable to that pipeline company. Extend these provisions to terminal tax distributions beginning in 2013.

29. *Individual Income Tax Deduction for Private School Tuition.* Create an individual income tax deduction for tuition paid by a claimant to a private school, as defined under current law, beginning in tax year 2014. Limit the deduction to tuition expenses of up to \$4,000 per year per pupil enrolled in kindergarten through grade eight and \$10,000 per year per pupil enrolled in grades nine through twelve. Define claimant as an individual who claims a pupil as a dependent for federal income tax purposes on his or her tax return; define pupil as an individual who is enrolled in kindergarten or grades one to twelve and who is a dependent of the claimant for federal income tax purposes; and define tuition as any amount paid by a claimant, in the year to which the claim relates, for a pupil's tuition to attend a private school, as defined under current law, that meets all the criteria for a private school, as enumerated under current law. Decrease estimated individual income tax collections by \$30,000,000 (GPR-Tax) in 2014-15.

30. *Utility Relocation Costs.* Modify Motion #115, *Utility Relocation Costs to Accommodate Urban Rail Transit Systems*, to amend the current law definition of "urban rail transit systems" by specifying that the system provides transportation by rail in a municipality and that the system begins service on or after the general effective date of the bill. Specify that the provisions identifying certain municipal regulations as unreasonable do not apply to a current law provision that prohibits utility lines or systems from obstructing or incommoding the public use of any highway, bridge, stream, or body of water.

### **Transportation and Property Tax Relief**

31. *Mass Transit Operating Assistance.* Reduce funding by \$1,064,900 SEG in 2013-14 and \$3,194,300 GPR in 2014-15 to provide a 4% increase in mass transit aids beginning in calendar year 2015, rather than in calendar year 2014. Delete the Governor's recommendation to convert the mass transit operating assistance program funding from the transportation fund to the general fund and instead transfer \$107,543,200 in general fund revenues, on a one-time basis, to the transportation fund in the 2013-15 biennium to provide the funding needed to pay the \$107,543,200 in 2014-15 transit aid from the transportation fund. Delete \$107,543,200 GPR and provide \$107,543,200 SEG in 2014-15 to reflect the restoration of mass transit funding to the transportation fund.

32. *General Transportation Aids -- Municipalities.* Provide \$4,778,100 SEG in 2014-15, establish the municipal calendar year distribution amount at \$321,260,500 for 2015 and



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRBb0344/9

MES/.../...

see

PMR

LFB:.....Olin (RR) – Motion # 999: Create individual income tax deduction  
for private school tuition

**FOR 2013-2015 BUDGET — NOT READY FOR INTRODUCTION**  
**ASSEMBLY AMENDMENT ,**  
**TO ASSEMBLY BILL 40**

O-NOTE

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 645, line 21: after that line insert:

3 **“SECTION 1304g.** 71.05 (6) (b) 49. of the statutes is created to read:

4 71.05 (6) (b) 49. For taxable years beginning after December 31, 2013, one of

5 the amounts specified under subd. 49. g. or h. that is paid by a claimant for tuition

6 for a pupil to attend an eligible institution. In this subdivision, the following terms

7 have the following meanings, and the following conditions apply:

8 a. “Claimant” means an individual who claims a pupil as a dependent under

9 section 151 (c) of the Internal Revenue Code, on his or her tax return.

10 b. “Elementary pupil” means an individual who is enrolled in grades

11 kindergarten to 8 at an eligible institution.

1 c. "Eligible institution" means a private school, as defined in s. 115.001 (3r).✓

2 d. "Pupil" means an elementary pupil or secondary pupil.

3 e. "Secondary pupil" means an individual who is enrolled in grades 9 to 12 at  
4 an eligible institution.

5 f. "Tuition" means any amount paid by a claimant, in the year to which the  
6 claim relates, for a pupil's tuition to attend an eligible institution.

7 g. For each elementary pupil, in each year to which the claim relates, the  
8 maximum amount of tuition which a claimant may subtract under this subdivision 49. g.  
9 in a taxable year is \$4,000.

10 h. For each secondary pupil, in each year to which the claim relates, the  
11 maximum amount of tuition which a claimant may subtract under this subdivision 49. h.  
12 in a taxable year is \$10,000.

13 i. If an individual is an elementary pupil and a secondary pupil in the same  
14 taxable year, the claimant may claim the subtraction under this subdivision for only  
15 one grade for that pupil for that taxable year."

16 (END)

D-NOTE



**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBb0344/?dn

MES:.....

*[Handwritten initials]*  
*[Handwritten signature]*

-late-

Rick Olin:

Is created s. 71.05 (6) (b) 49. i. consistent with your intent? The motion did not specify what would happen if a pupil was in grades 8 and 9 in the same taxable year and a claimant paid tuition for both grades in a taxable year. Also, the motion does not specify whether a nonresident or part-year resident may claim all, part, or no amount of the deduction. Should the amendment address this situation? Should the definition of "tuition" be limited to "educational expenses", and should it specifically include or exclude items which may be required for attendance such book fees, lab fees, or athletic fees?

You should also be aware that, should this amendment become law, it could be challenged as possibly violating the Equal Protection and Establishment Clauses of the U.S. Constitution and the related provisions of the Wisconsin Constitution. A potential equal protection problem is that the deduction in this amendment is available only to parents of children who attend private schools, but not to parents of children who attend public or charter schools. Opponents of the bill could also argue that, because the amendment may make it easier for pupils to attend a school at which the teaching of religious tenets, doctrines, or worship occurs, the primary effect of the bill is to benefit parochial schools in violation of the Establishment Clause.

In the case of *Mueller v. Allen*, 463 U.S. 388, 103 S. Ct. 3062 (1983), the U.S. Supreme Court upheld a Minnesota statute that allows taxpayers to deduct from their gross annual income expenses incurred, up to a certain level, for "tuition, textbooks and transportation" for their children in public or private elementary or secondary school.

Although an argument can be made that *Mueller* would apply to the deduction created in this bill, you should be aware that the *Mueller* case was a close decision approved by a 5 to 4 majority. As the dissent in *Mueller* points out, starting at 463 U.S. 404 and 103 S. Ct. 3072, the majority decision seems to fly in the face of a long series of Supreme Court decisions, such as *Committee for Public Education and Religious Liberty v. Nyquist*, 413 U.S. 756, 93 S. Ct. 2955 (1973), *Lemon v. Kurtzman*, 403 U.S. 602, 91 S. Ct. 2105 (1971), and *Sloan v. Lemon*, 413 U.S. 825, 93 S. Ct. 2982 (1973), which were all decided by much stronger majorities.

Under *Mueller*, however, supporters of this amendment could argue that it is constitutional for several reasons. First, it evinces a proper and secular legislative

purpose in creating an educated populace. Second, the Establishment Clause is not violated because the assistance is provided to the taxpayer and not to the school itself. *Mueller* at 399 and 103 S. Ct. at 3069.

Opponents of the bill could also make several strong arguments against the amendment's constitutionality. First, they could argue that this amendment is different from the law addressed in *Mueller* because, unlike the Minnesota statute, the deduction in the amendment is not available to all parents — it is available only to the parents of children who attend sectarian or nonsectarian private schools so the bill arguably *does* have the “primary effect of advancing the sectarian aims of the nonpublic schools.” See *Mueller* at 396 and 103 S. Ct. at 3067 (citations omitted).

Just two years after *Mueller* was decided, the Supreme Court noted the significance of the fact that the Minnesota law applied to parents whose children attended both public and private schools. See *School District of the City of Grand Rapids v. Ball*, 473 U.S. 373, 396. In fact, the *Mueller* majority itself thought that this fact was an important distinction between the Minnesota law and the law that was found unconstitutional in *Nyquist*. See *Mueller* at 398–399.

Second, opponents of the amendment could argue, a court will not necessarily accept the legislature's claim that the bill has a secular or public purpose, *State ex. rel. Warren v. Reuter*, 44 Wis. 2d 201, 212 (1969), and that “the propriety of a legislature's purposes may not immunize from further scrutiny a law which...has a primary effect that advances religion,” *Nyquist* at 774, 93 S. Ct. at 2966.

Third, *Nyquist* and *Kurtzman* forbid any direct or indirect subsidy of religious education through any sort of a tax credit, subsidy, or deduction and, opponents could argue, the “primary effect” of this bill is to do precisely that, at least indirectly. See *Nyquist* at 783, 786, 789–791, 793, and 794, and 93 S. Ct. at 2971 to 2974 and 2976, *Kurtzman* at 613 and 625, and 91 S. Ct. at 2111 and 2117.

Perhaps the amendment would be less likely to be challenged if the definition of “tuition” specifically excluded any amount of tuition payments or educational materials that are used in or related to the teaching of religion. If the definition was changed in such a way, however, opponents of the amendment could still argue that that distinction may be meaningless by citing one of the reasons the Supreme Court struck down the New York law at issue in *Nyquist*; the Court stated that under the New York law there was an “...absence of an effective means of guaranteeing that the state aid derived from public funds will be used exclusively for secular, neutral, and nonideological purposes...”

Even if an effective means exists to guarantee that no public money is used to teach religious doctrines, opponents of the amendment could argue that the deduction still runs afoul of *Nyquist* by claiming that the amendment provides an indirect subsidy to religious education merely by making attendance at religiously affiliated institutions more affordable. “By reimbursing parents for a portion of their tuition bill, the State seeks to relieve their financial burdens sufficiently to assure that they continue to have the option to send their children to religion-oriented schools.” *Nyquist* at 784.

In addition, it could be argued by opponents of the amendment that it violates the Wisconsin Constitution because art. I, sec. 18, is more prohibitive than the religion

clauses in the federal constitution, *Reuter* at 227 and 58 Opinion of the Attorney General 163, 167 (1969). Although the Wisconsin Supreme Court believes that the federal Establishment Clause should be used as a guide to interpret art. I, sec. 18, of the state constitution (see *King v. Village of Waunakee*, 185 Wis. 2d 25, 54-55 (1994) and *Jackson v. Benson*, 218 Wis. 2d 835, 876-878 (1998)), the Court has also reaffirmed its prior decisions stating that "the Wisconsin Constitution [provides] stronger protection of religious freedom than that envisioned in the federal constitution." *State v. Miller*, 202 Wis. 2d 56, 64 (1996).

This is a very complex issue and, in light of the conflicting precedents that exist in this area of constitutional law, it is impossible to determine whether this amendment would withstand a constitutional challenge. I believe, however, that a summary of the various arguments involved should be brought to your attention.

If you have any further questions about these issues, please don't hesitate to contact me.

Marc E. Shovers  
Managing Attorney  
Phone: (608) 266-0129  
E-mail: [marc.shovers@legis.wisconsin.gov](mailto:marc.shovers@legis.wisconsin.gov)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBb0344/1dn  
MES:sac:jm

June 6, 2013

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State of Wisconsin  
2013 - 2014 LEGISLATURE



LRBb0344/1  
MES:sac:jm

LFB:.....Olin (RR) - Motion # 999: Create individual income tax deduction  
for private school tuition

**FOR 2013-2015 BUDGET — NOT READY FOR INTRODUCTION**

**ASSEMBLY AMENDMENT ,**

**TO ASSEMBLY BILL 40**

my intent with  
this edit is to  
clarify that the  
deduction is not  
limited to one child  
for multiple child families PD

tuition  
~~tuition~~ expenses  
subject to the  
limitations

1 At the locations indicated, amend the bill as follows:

2 1. Page 645, line 21: after that line insert:

3 "SECTION 1304g. 71.05 (6) (b) 49. of the statutes is created to read:

4 71.05 (6) (b) 49. For taxable years beginning after December 31, 2013, ~~one of~~

5 ~~the amounts~~ specified under subd. 49. g. or h. that is paid by a claimant ~~for tuition~~

6 for a pupil to attend an eligible institution. In this subdivision, the following terms

7 have the following meanings, and the following conditions apply:

8 ✓ a. "Claimant" means an individual who claims a pupil as a dependent under  
9 section 151 (c) of the Internal Revenue Code on his or her tax return.

10 ✓ b. "Elementary pupil" means an individual who is enrolled in grades  
11 kindergarten to 8 at an eligible institution.

that meets all of the  
criteria under s. 118.165(c)

1 c. "Eligible institution" means a private school, as defined in s. 115.001 (3r).

2 d. "Pupil" means an elementary pupil or secondary pupil.

3 ✓ e. "Secondary pupil" means an individual who is enrolled in grades 9 to 12 at  
4 an eligible institution.

5 ✓ f. "Tuition" means any amount paid by a claimant, in the year to which the  
6 claim relates, for a pupil's tuition to attend an eligible institution.

7 g. For each elementary pupil, in each year to which the claim relates, the  
8 maximum amount of tuition which a claimant may subtract under this subdivision

9 49. g. in a taxable year is \$4,000.

10 h. For each secondary pupil, in each year to which the claim relates, the  
11 maximum amount of tuition which a claimant may subtract under this subdivision

12 49. h. in a taxable year is \$10,000.

13 i. If an individual is an elementary pupil and a secondary pupil in the same  
14 taxable year, the claimant may claim the subtraction under this subdivision for only  
15 one grade for that pupil for that taxable year."

16 (END)

Marc - I used 2011 LRB 0941/  
as a model for the  
motion -

Rick





State of Wisconsin  
2013 - 2014 LEGISLATURE



LRBb0344/d

MES:sac:fm

*RMR*

LFB:.....Olin (RR) – Motion # 999: Create individual income tax deduction  
for private school tuition

**FOR 2013-2015 BUDGET — NOT READY FOR INTRODUCTION**  
**ASSEMBLY AMENDMENT ,**  
**TO ASSEMBLY BILL 40**

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 645, line 21: after that line insert:

3 **“SECTION 1304g.** 71.05 (6) (b) 49. of the statutes is created to read:

4 71.05 (6) (b) 49. For taxable years beginning after December 31, 2013, one of

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6 for a pupil to attend an eligible institution. In this subdivision, the following terms

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8 a. “Claimant” means an individual who claims a pupil as a dependent under  
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10 b. “Elementary pupil” means an individual who is enrolled in grades  
11 kindergarten to 8 at an eligible institution.

*tuition expenses,  
subject to the  
limitations*

→ that meets all of the criteria  
under S. 118.165 (d)

- 1 c. "Eligible institution" means a private school, as defined in s. 115.001 (3r).
- 2 d. "Pupil" means an elementary pupil or secondary pupil.
- 3 e. "Secondary pupil" means an individual who is enrolled in grades 9 to 12 at
- 4 an eligible institution.
- 5 f. "Tuition" means any amount paid by a claimant, in the year to which the
- 6 claim relates, for a pupil's tuition to attend an eligible institution.
- 7 g. For each elementary pupil, in each year to which the claim relates, the
- 8 maximum amount of tuition which a claimant may subtract under this subdivision
- 9 49. g. in a taxable year is \$4,000.
- 10 h. For each secondary pupil, in each year to which the claim relates, the
- 11 maximum amount of tuition which a claimant may subtract under this subdivision
- 12 49. h. in a taxable year is \$10,000.
- 13 i. If an individual is an elementary pupil and a secondary pupil in the same
- 14 taxable year, the claimant may claim the subtraction under this subdivision for only
- 15 one grade for that pupil for that taxable year."

16 (END)



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRBb0344/2  
MES:sac:jm

rm/Nr  
e3  
egjs

LFB:.....Olin (RR) – Motion # 999: Create individual income tax deduction  
for private school tuition

**FOR 2013-2015 BUDGET — NOT READY FOR INTRODUCTION**  
**ASSEMBLY AMENDMENT ,**  
**TO ASSEMBLY BILL 40**

Subject to the definitions  
provided in subd. 49. b. to g.  
and the limitations  
specified in subd. 49. h. to j.

a. At the locations indicated, amend the bill as follows:

1. Page 645, line 21: after that line insert:

**"SECTION 1304g.** 71.05 (6) (b) 49. of the statutes is created to read:

71.05 (6) (b) 49. For taxable years beginning after December 31, 2013, tuition

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the following terms have the following meanings, and the following conditions apply:

a. "Claimant" means an individual who claims a pupil as a dependent under

b. section 151 (c) of the Internal Revenue Code on his or her tax return.

c. b. "Elementary pupil" means an individual who is enrolled in grades

11 kindergarten to 8 at an eligible institution.

In this subdivision,

In this subdivision,

1 d. c. "Eligible institution" means a private school, as defined in s. 115.001 (3r),  
2 that meets all of the criteria under s. 118.165 (1).

3 e. d. "Pupil" means an elementary pupil or secondary pupil.

4 f. e. "Secondary pupil" means an individual who is enrolled in grades 9 to 12 at  
5 an eligible institution.

6 g. f. "Tuition" means any amount paid by a claimant, in the year to which the  
7 claim relates, for a pupil's tuition to attend an eligible institution.

8 h. e. g. For each elementary pupil, in each year to which the claim relates, the  
9 maximum amount of tuition <sup>expenses</sup> which a claimant may subtract under this subdivision

10 <sup>49/g</sup> in a taxable year is \$4,000.

11 i. e. h. For each secondary pupil, in each year to which the claim relates, the  
12 maximum amount of tuition <sup>expenses</sup> which a claimant may subtract under this subdivision

13 <sup>49/h</sup> in a taxable year is \$10,000.

14 j. i. If an individual is an elementary pupil and a secondary pupil in the same  
15 taxable year, the claimant may claim the subtraction under this subdivision for only  
16 one grade for that pupil for that taxable year."

17

(END)



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRBb0344/3  
MES:sac&cjs:rs

LFB:.....Olin (RR) – Motion # 999: Create individual income tax deduction  
for private school tuition

**FOR 2013-2015 BUDGET -- NOT READY FOR INTRODUCTION**

**ASSEMBLY AMENDMENT ,**

**TO ASSEMBLY BILL 40**

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 645, line 21: after that line insert:

3 **“SECTION 1304g.** 71.05 (6) (b) 49. of the statutes is created to read:

4 71.05 (6) (b) 49. a. Subject to the definitions provided in subd. 49. b. to g. and  
5 the limitations specified in subd. 49. h. to j. for taxable years beginning after  
6 December 31, 2013, tuition expenses that are paid by a claimant for tuition for a pupil  
7 to attend an eligible institution.

8 b. In this subdivision, “claimant” means an individual who claims a pupil as  
9 a dependent under section 151 (c) of the Internal Revenue Code on his or her tax  
10 return.

c. In this subdivision, “elementary pupil” means an individual who is enrolled in grades kindergarten to 8 at an eligible institution.

d. In this subdivision, “eligible institution” means a private school, as defined in s. 115.001 (3r), that meets all of the criteria under s. 118.165 (1).

e. In this subdivision, “pupil” means an elementary pupil or secondary pupil.

f. In this subdivision, “secondary pupil” means an individual who is enrolled in grades 9 to 12 at an eligible institution.

g. In this subdivision, “tuition” means any amount paid by a claimant, in the year to which the claim relates, for a pupil’s tuition to attend an eligible institution.

h. For each elementary pupil, in each year to which the claim relates, the maximum amount of tuition expenses which a claimant may subtract under this subdivision in a taxable year is \$4,000.

i. For each secondary pupil, in each year to which the claim relates, the maximum amount of tuition expenses which a claimant may subtract under this subdivision in a taxable year is \$10,000.

j. If an individual is an elementary pupil and a secondary pupil in the same taxable year, the claimant may claim the subtraction under this subdivision for only one grade for that pupil for that taxable year.”.

**(END)**